



**Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA Workers) v Gurunanak (Ramgarhia) Sikh Hospital (Cause E788 of 2022) [2024] KEELRC 1255 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1255 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E788 OF 2022  
BOM MANANI, J  
MAY 16, 2024**

**BETWEEN  
KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS  
AND HOSPITAL WORKERS (KUDHEIHA WORKERS) ..... CLAIMANT  
AND  
GURUNANAK (RAMGARHIA) SIKH HOSPITAL ..... RESPONDENT**

**RULING**

**Background**

1. Through the instant action, the Claimant seeks to compel the Respondent to conclude the collective bargaining process to enable a new Collective Bargaining Agreement (CBA) between the parties. The Claimant avers that although the parties have a subsisting Recognition Agreement and have entered into several CBAs previously, the Respondent has declined to conclude negotiations with respect to the proposed CBA. Hence, the need for the court to intervene and bring the process to a close.
2. Upon being served with the Statement of Claim, the Respondent filed a Memorandum of Response dated 19<sup>th</sup> December 2022. As part of its defense, the Respondent has asserted that the Claimant lacks the requisite simple majority of unionizable employees to entitle it to conclude negotiations of a new CBA with it (the Respondent).
3. The Respondent has now filed the application dated 17<sup>th</sup> January 2024 in which it proposes to amend the Memorandum of Reply to *inter alia*, plead lack of the requisite simple majority of its staff by the Claimant which will entitle the parties to negotiate a new CBA. It also proposes to aver that it has applied to the National Labour Board to revoke the current Recognition Agreement between the parties.



4. The Claimant has opposed the request to amend the Memorandum of Reply to introduce the foregoing averments. According to it, the issue of recognition has not been raised as a trade dispute through the mechanisms stipulated under the *Labour Relations Act*. As such, it is not open to the Respondent to plead it as a defense for its inaction with respect to the impugned CBA.

### **Analysis**

5. The principles that govern applications to amend pleadings are now well settled. In *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR, the court observed as follows on the matter:-

“ [the] powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; [the] power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defense it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”

6. The issue which the Respondent seeks to bring on board but which the Claimant is vehemently opposed to is whether, the Respondent having applied to the National Labour Board to revoke the Recognition Agreement between the parties, is entitled to resist concluding CBA negotiations with the Claimant during the pendency of the decision by the National Labour Board. I note that the Claimant has alluded to the same issue at paragraphs 17, 20 and 24 (c) of its Memorandum of Claim. To my mind therefore, the question whether a party who has applied for revocation of a Recognition Agreement can resist concluding CBA negotiations on that ground is a matter that lies at the heart of the dispute between the parties. It is a matter which the court ought to determine to enable the parties move forward, one way or the other.
7. The fact that the Respondent proposes to raise the matter as part of its defense does not mean that it is a valid defense that will succeed on the merits. What I understand the Respondent to be stating is that this is one of the issues that requires to be addressed in order for the parties to get an effective remedy to the dispute between them.
8. The proposed amendment does not seek to bring on board a new and inconsistent cause of action. Neither will it take away an accrued defense. At the same time, I am convinced that any inconvenience that will be visited on the Claimant as a result of the amendment can be redressed by an award of costs.

### **Determination**

9. As such, I reach the conclusion that the application to amend the defense is merited.
10. Accordingly, the application is allowed on the following terms:-
  - a. The Respondent is granted leave to amend its defense in terms of the proposed draft amended defense.
  - b. The proposed amendment to be filed and served within fourteen (14) days of this order.



- c. The Claimant is at liberty to file a reply to the amended defense within fourteen (14) days of service of the amended Statement of Defense.
- d. Costs of the application assessed at Ksh, 7,000.00 are granted to the Claimant.

**DATED, SIGNED AND DELIVERED ON THE 16<sup>TH</sup> DAY OF MAY, 2024**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

